

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

W.6 Restaurant Group Ltd., d/b/a The Barley)
House of Cleveland, et al.)
)
Plaintiffs,)
)
-vs-)
)
Richard Bengtson, et al.)
)
Defendants.)

CASE NO. 1:17-cv-02521

JUDGE DAN A. POLSTER

PLAINTIFFS' RESPONSE TO
MOTION TO INTERVENE [DOC. 29]

Plaintiffs, W.6 Restaurant Group Ltd., d/b/a The Barley House of Cleveland and Richie Madison join in the response filed by Defendants regarding the Motion to Intervene and Gain Access to Judicial Document filed by Eugene Volokh [Doc. 29].

There is no public need to consume the Confidential Private Settlement Agreement. As a private agreement, the Confidential Partial Settlement Agreement raises no First Amendment concerns. As a private, non-judicial document, it raises no common law right to public access.

While subject to Court enforcement, much like many other private agreements, the parties intended that the Confidential Partial Settlement Agreement would remain confidential. Confidentiality was a material term of the contract without which the parties would not have reached the agreement. The possibility of Court enforcement does not change this fact. Moreover, the parties have treated the agreement as confidential by not placing it on the public docket, attaching it to court filings or admitting it into evidence at an evidentiary hearing. Thus, confidentiality has not been waived by either party.

For the reasons stated above and in Defendants' Response to Motion to Intervene, Plaintiffs respectfully request that the Court deny Prof. Volokh's Motion to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Christopher B. Congeni

Counsel for Plaintiffs